



UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JARRELL D. PEREZ,

Plaintiff,

-against-

LOUIS MOLINA, et al.,

Defendants.

23-CV-801 (JHR) (BCM)

ORDER OF SERVICE

BARBARA MOSES, United States Magistrate Judge.

For the reasons set forth below, the Court directs service of a summons and plaintiff's Amended Complaint on "Terrance Shaw (Officer or Captain), Badge #1683."

Background

This is a pro se civil rights action filed by a detainee seeking damages for allegedly unconstitutional conditions of confinement at Riker's Island. The Amended Complaint (Dkt. 8) was filed one year ago. On October 17, 2023, the Court requested that defendants, including a defendant identified as "Captain Shaw," waive service of summons. (Dkt. 11.) On November 15, 2023, the waiver form was returned unexecuted for certain defendants, including Captain Shaw, with the notation, "Need more information for identification." (Dkt. 14.) On April 5, 2024, the Court issued a *Valentin* order, directing plaintiff to provide more detailed descriptions of Captain Shaw, "Captain Mulbrav," and "Captain Smith." (Dkt. 23.) On April 18, 2024, plaintiff provided the requested descriptions. (Dkt. 25.) On May 21, 2024, the New York City Law Department (Law Department), counsel for defendants, provided titles, correct spellings, and badge numbers for all three, identifying "Captain Shaw" as "Corrections Officer Shaw, Badge # 1683." (Dkt. 26.) On May 29, 2024, the Court directed the Law Department and the Department of Corrections (DOC) to "either provide the address(es) where the three identified individuals may be served, or state whether the DOC waives service on their behalf." (Dkt. 27.)

On June 20, 2024, the DOC waived service on behalf of Captain Kadessha Mullgrav and Captain Omar Smith. (Dkt. 34.) On June 21, 2024, the Law Department stated that the DOC was unable to waive service for "Captain Shaw" because "he is no longer actively employed" at the DOC, but advised that he could be served at Legal Division, New York City Department of Correction, 75-20 Astoria Blvd S, Suite 305, E. Elmhurst, NY, 11370. (Dkt. 36.) The Law Department did not explain why it identified this defendant as "Captain Shaw" after previously identifying him as a Correction Officer. Nor did it explain why the DOC was authorized to *accept* service on behalf of defendant Shaw but was not authorized to *waive* service on his behalf.

By Order dated June 25, 2024, the Court directed service of a summons and plaintiff's Amended Complaint on defendant Shaw by the United States Marshals Service (USMS), at the DOC's Legal Division, 75-20 Astoria Blvd S., Suite 305, E. Elmhurst, NY, 11370 (the Elmhurst Address). (Dkt. 37.) The summons was issued as to defendant Shaw on July 2, 2024. (Dkt. 38.) It identified him as "Captain Shaw Badge #1683." (*Id.*) However, on September 3, 2024, the Court received, from the USMS, a Process Receipt and Return, dated August 22, 2024, stating that service was attempted by mail on July 8, 2024, with "[n]o response," and again, in person, on August 22, 2024 (at a cost to the taxpayers of \$77.06), but that service was not completed because "Legal Division can't locate 'Captain Shaw, Badge #1683' without a first name and [the] badge number shows no matching results." (Dkt. 46.)

On September 13, 2024, the Court ordered the Law Department to provide the *full* name of defendant Shaw, with an *accurate* badge number and a *valid* service address, or waive service on defendant Shaw's behalf. (Dkt. 47.) On September 20, 2024, the Law Department identified defendant Shaw as "Captain Terrance Shaw, Badge # 1683," and reiterated that he could be served at the Elmhurst Address. (Dkt. 48.) Once again, the Law Department did not explain why the DOC

was authorized to *accept* service on behalf of defendant Shaw but was not authorized (or willing) to *waive* service on his behalf – even after failing to "locate" him for service in August, despite being provided with an accurate last name and badge number.

Service

To allow plaintiff to re-attempt service on defendant Shaw through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form ("USM-285 form") for defendant **Terrance Shaw (Officer or Captain), Badge #1683**, at the following address: **Legal Division, New York City Department of Correction, 75-20 Astoria Blvd S, Suite 305, E. Elmhurst, NY, 11370**. The Clerk of Court is further instructed to (1) issue a summons which includes defendant Shaw's full name and badge number, and this address, and (2) deliver to the United States Marshals Service a copy of this order, the summons, and all other paperwork necessary for the USMS to effect service on Shaw.

If service on defendant Shaw has not been effected by **October 25, 2024**, defendant City of New York¹ must, on that day, submit a sworn affidavit or declaration, made by a DOC employee with personal knowledge of the facts stated, explaining the reason(s) for that failure.

Dated: New York, New York
September 26, 2024

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge

¹ Because the DOC is an agency of the City of New York and "not a suable entity" in its own name, *see Sullivan v. City of New York*, 690 F. App'x 63, 66 (2d Cir. 2017), plaintiff's claims run against the individual correction officers who allegedly violated his rights, a former Commissioner of the DOC, and the City of New York.